

## Message Text

PAGE 01 STATE 082598  
ORIGIN STR-07

INFO OCT-01 EUR-12 EA-10 IO-13 ISO-00 EB-08 AGRE-00  
CEA-01 LAB-04 COME-00 NSCE-00 CIAE-00 DODE-00  
FRB-03 H-01 INR-10 INT-05 L-03 NSAE-00 PA-01  
CTME-00 AID-05 SS-15 ITC-01 TRSE-00 SP-02 SOE-02  
OMB-01 DOE-15 STRE-00 SSO-00 INRE-00 USIE-00  
AF-10 ARA-10 NEA-10 /150 R

DRAFTED BY STR:SCOFFIELD/PH

APPROVED BY STR:WOLFF

STATE JKATZ (SUBSTANCE)

USDA DHATHAWAY (SUBS)

CEA BNORDHAUS (SUBS)

LABOR HBLACKMAN (SUBS)

COMMERCE FWEIL (SUBSTANCE)

NSC JRENNER (SUBSTANCE)

-----052024 310207Z /64

O 310032Z MAR 78

FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

INFO AMEMBASSY BRUSSELS IMMEDIATE

AMEMBASSY TOKYO

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U.S. MTN GENEVA , USEC BRUSSELS

E.O. 11652:

TAGS: MTN

SUBJECT: SAFEGUARDS

REF.: 1. STATE 077791

2. GENEVA 04674

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1. TPRG MTN REVIEW GROUP CHAIRED BY AMB. WOLFF (STR) MET ON MARCH 30 WITH JULES KATZ (STATE), DALE HATHAWAY (USDA), BILL NORDHAUS (CEA), HERBERT BLACKMAN (LABOR), FRANK WEIL (COMMERCE), AND JOHN RENNER (NSC) IN ATTENDANCE. THERE WAS A LENGTHY DISCUSSION ON ISSUE OF SELECTIVITY IN THE SAFEGUARD CODE. THE TEXT BELOW WAS APPROVED, WITH TWO DISSENTS.

STATE, AGRICULTURE, CEA, COMMERCE AND STR APPROVED THE PAPER.

NSC BELIEVES THAT THE CONDITIONS IN STEP 3 ARE TOO LOOSE AND WILL ALLOW TOO LIBERAL USE OF UNILATERAL SELECTIVITY, PREFERING THAT STRICTER TIME LIMITS, DEGRESSIVITY ETC. BE

REQUIRED IN ADDITION TO PRIOR APPROVAL.- THE DEPARTMENT OF LABOR BELIEVES THERE SHOULD BE MORE FLEXIBILITY TO USE UNILATERAL SELECTIVITY IN STEP 3.

2. AMBASSADOR WOLFF FULLY EXPLAINED VIEW OF MTN DEL IN REF 2 AND LONG DISCUSSION ON USES OF SELECTIVITY, AND CONSIDERATION OF MTN DEL VIEW OF EC POSITION TOOK PLACE. IN THE VIEW OF THE GROUP, THE U.S. POSITION SHOULD BE THAT MFN

IS THE DESIRED METHOD OF TAKING RESTRICTIVE ACTION AND THAT ANY DEPARTURES MUST BE STRICTLY CONTROLLED. THE GROUP ALSO RECOGNIZED, HOWEVER, THAT THE ISSUE IS FOCUSED ON THE CONTROL OF SELECTIVITY AND IT IS ACCEPTED THAT SOME SELECTIVITY WILL BE ALLOWED IN THE FUTURE SYSTEM. THE GROUP AGREED THAT CONSENSUAL SELECTIVITY IS THE PREFERRED METHOD, AND

THAT IT IS IN THE U.S. INTEREST TO BE VERY STRINGENT ON THE ISSUE OF UNILATERAL SELECTIVITY.

3. TEXT BELOW IS U.S. POSITION AS APPROVED BY AMBASSADOR STRAUSS AND SHOULD BE USED IN BILATERAL DISCUSSIONS WITH EC AND JAPAN AS SET FORTH IN TEXT. OUR MAIN OBJECTIVE IS TO PURSUADE THE EC THAT CONSENSUAL CONFIDENTIAL

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SELECTIVITY IS ALL THAT WE AND THEY NEED TO HANDLE THESE TYPES OF PROBLEMS AND THAT GOING BEYOND THIS ENDANGERS THE TRADING SYSTEM. IT SHOULD BE BORNE IN MIND THAT BOTH WE AND THEY HAVE FOR MANY YEARS MADE EXTENSIVE USE OF CONSENSUAL SELECTIVITY (ALBEIT FREQUENTLY OUTSIDE THE SYSTEM) WITHOUT UNDUE DIFFICULTY. EVEN THE EXCEPTIONAL KOREAN TV CASE IS APPARENTLY MOVING BACK TOWARD THE SYSTEM OUTLINED IN OUR PAPER. AN ATTEMPT AT AGREEMENT FAILED, THE MATTER WAS REFERRED TO AN INTERNATIONAL BODY AND THE PARTIES ARE NOW ENGAGED IN FURTHER NEGOTIATIONS. WHILE CONSENSUAL SELECTIVITY IS AN ADEQUATE TECHNIQUE TO SOLVE THESE PROBLEMS, THE JAPANESE AND OTHERS WILL HAVE TO BE PURSUADED THAT TOO MANY CONSTRAINTS WILL RENDER THIS TECHNIQUE USELESS. THE ADDED OBLIGATIONS AND PROCEDURES OF THE CODE (NOTIFICATION, CONSULTATION, INJURY DETERMINATION, TIME LIMITS, ETC) ASSURE THAT THE SYSTEM WILL NOT BE ABUSED, AND ARE ABOUT AS GREAT A BURDEN

AS THIS FACILITY CAN BEAR AND STILL BE USABLE.

4. BEGIN TEXT; QUOTE

- POSITION PAPER ON SAFEGUARDS

PROBLEM

PLURILATERAL DISCUSSIONS HAVE BEEN HELD WITH KEY DEVELOPED

COUNTRIES DURING THE PAST FEW WEEKS IN AN ATTEMPT TO PRODUCE A NEGOTIATING TEXT OF A SAFEGUARD CODE. TEXTS ON INDIVIDUAL POINTS HAVE BEEN SUBMITTED BY THE U.S., THE EC, JAPAN, CANADA AND THE NORDIC COUNTRIES. WE EXPECT THE GROUP NOW TO TRY TO COMBINE THESE TEXTS IN A SINGLE DOCUMENT WITH DISAGREED PORTIONS IN BRACKETS. SELECTIVE APPLICATION OF SAFEGUARD MEASURES CONTINUES TO BE A KEY

ISSUE. SEPARATE, BILATERAL DISCUSSIONS ON THIS ISSUE WITH  
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THE EC, JAPAN AND OTHERS WILL PROBABLY BE NECESSARY.  
INSTRUCTIONS FOR THE U.S. REPRESENTATIVE ARE NEEDED.

#### RECOMMENDATION

THE U.S. REPRESENTATIVE MAY DISCUSS THE ISSUE OF SELECTIVE APPLICATION OF SAFEGUARD MEASURES BILATERALLY AND INFORMALLY WITH THE EC AND JAPANESE DELEGATIONS, AND OTHER DELEGATIONS AS APPROPRIATE, DRAWING ON THE DISCUSSION SECTION OF THIS PAPER.

#### DISCUSSION

PLURILATERAL DISCUSSIONS HAVE BEEN HELD WITH KEY DEVELOPED COUNTRIES DURING THE PAST FEW WEEKS IN AN ATTEMPT TO PRODUCE A NEGOTIATING TEXT OF A SAFEGUARD CODE. (DISCUSSIONS HAVE ALSO BEEN HELD WITH KEY LDCS IN THE 7 PLUS 7). TEXTS ON INDIVIDUAL POINTS HAVE BEEN SUBMITTED BY THE U.S., THE EC, JAPAN, CANADA AND THE NORDIC COUNTRIES. WE EXPECT THE GROUP NOW TO TRY TO COMBINE THESE TEXTS IN A SINGLE DOCUMENT WITH DISAGREED PORTIONS IN BRACKETS. THIS SHOULD BE A FAIRLY MECHANICAL PROCESS AND NO SPECIAL INSTRUCTIONS ARE NECESSARY. IF A BRACKETED TEXT IS PRODUCED, IT WILL BE REGARDED AS A FIRST DRAFT TO WHICH COUNTRIES ARE NOT COMMITTED AT THIS STAGE AND TO WHICH ADDITIONAL MATERIAL CAN BE ADDED.

SELECTIVE VERSUS MFN APPLICATION OF SAFEGUARD MEASURES REMAINS A CRITICAL ISSUE. THE NORDIC COUNTRIES WANT SELECTIVITY TO BE THE NORM WITH MFN ACTION ONLY WHEN IMPORTS CAUSING INJURY CANNOT BE SEPARATED FROM OTHER IMPORTS. THE EC INITIALLY SUPPORTED THE NORDIC FORMULATION. THE U.S. AGREED TO ACCEPT SOME SELECTIVITY IN  
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A REVISED SYSTEM BUT SUBJECT TO STRICT CONSTRAINTS TO PREVENT ABUSE AND SUBJECT TO MULTILATERAL SURVEILLANCE. IN DECEMBER 1977, THE US AND EC AGREED TO A COMPROMISE JOINT FORMULATION WHICH WOULD REQUIRE FURTHER ELABORATION.

JAPAN HAS SO FAR REFUSED TO DISCUSS SELECTIVITY IN THE PLURILATERAL MEETINGS, ALTHOUGH THE JAPANESE HAVE GIVEN US A WORKING PAPER ON A CONFIDENTIAL BASIS SETTING FORTH SOME SUGGESTIONS (SEE GENEVA 04411). CANADA AND AUSTRALIA HAVE ARGUED THAT THEY SHOULD NOT BE ASKED TO SUPPLY CONDITIONS FOR NON-MFN APPLICATION BECAUSE THEIR POSITION IS THAT ONLY MFN APPLICATION SHOULD BE PERMITTED. THE LDCS HAVE RECENTLY BECOME VOCAL IN RESISTING SELECTIVE APPLICATION.

THE EC HAS INDICATED THAT PARALLEL PROGRESS MUST BE MADE ON SELECTIVITY AND OTHER ISSUES; THEY MAY THEREFORE REFUSE, AT SOME POINT, TO GO ANY FURTHER UNTIL SOME TANGIBLE PROGRESS IS MADE ON SELECTIVITY. IN ORDER TO KEEP THE EC ON BOARD WHILE A BRACKETED TEXT IS BEING

PRODUCED, IT WOULD BE DESIRABLE TO BEGIN A BILATERAL DIALOGUE WITH THEM ON SELECTIVITY. IF THIS IS DONE, WE SHOULD HOLD SIMILAR BILATERALS WITH JAPAN AND OTHER KEY COUNTRIES AS APPROPRIATE. (WE WILL IN ANY CASE HAVE TO DISCUSS THE IDEAS IN THE JAPANESE PAPER BILATERALLY WITH THEM IN THE NEXT FEW DAYS). A COMPROMISE MAY EVENTUALLY EMERGE WHICH CAN THEN BE INTRODUCED INTO THE TEXT OF THE SAFEGUARDS CODE. SINCE THERE IS AN IMPLIED LINKAGE BETWEEN SAFEGUARDS AND LIBERALIZATION IN THE MTN, THESE ISSUES SHOULD GO FORWARD IN PARALLEL. MOREOVER, AN EXTENDED DISCUSSION MAY DRAW THE EC GRADUALLY TOWARD CLOSER PROXIMITY TO MFN APPLICATION.

IN BILATERAL DISCUSSIONS WITH THE EC IT WOULD BE USEFUL TO EXPLORE THE COMMUNITY'S SELECTIVITY FORMULATION  
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IN MORE DETAIL. FOR EXAMPLE, TO WHAT EXTENT DOES THE EC ENVISAGE PRIOR MULTILATERAL EXAMINATION OF CASES IN WHICH SELECTIVE APPLICATION IS INTENDED? TO WHAT EXTENT WOULD THE REQUESTING PARTY HAVE TO ABIDE BY THE DETERMINATION OF THE MULTILATERAL BODY AS TO WHETHER SELECTIVITY WAS WARRANTED?

SECONDLY, IT WOULD BE USEFUL TO KNOW WHAT GUIDANCE THE EC ENVISAGES GIVING THE COMMITTEE TO ASSIST IT IN REACHING DECISIONS. HOW WOULD A COMMITTEE DETERMINE WHICH IMPORTS ARE CAUSING INJURY? IF INJURY IS PRESENT, IMPORTS FROM ANY SOURCE COULD BE CONSIDERED AS CONTRIBUTING TO IT. DOES THE EC INTEND TO SUGGEST ADDITIONAL CRITERIA SUCH AS

THE PROPORTION OF IMPORTS FROM A GIVEN SOURCE; THE RATE OF INCREASE IN IMPORTS; THE DEGREE OF CONCENTRATION OF IMPORTS IN NARROW PRODUCT CATEGORIES; THE RELATIVE PRICES OF IMPORTS FROM DIFFERENT SOURCES; OR CONDITIONS IN THE

EXPORTING COUNTRY SUCH AS LABOR STANDARDS AND TRADING PRACTICES?

IF THE COMMITTEE IS NOT GIVEN EXPLICIT GUIDANCE ON HOW TO APPLY THE PRINCIPLE, IT MAY HAVE DIFFICULTY REACHING A DECISION. ON THE OTHER HAND, IF DETAILED GUIDELINES ARE SET FORTH SOME CASES IN WHICH SELECTIVE ACTION MIGHT BE APPROPRIATE COULD BE EXCLUDED.

WE WOULD PREFER AN APPROACH THAT AVOIDED THESE DIFFICULTIES EXCEPT IN EXTREME CASES. OUR PRESENT THINKING ENVISAGES A THREE STEP SEQUENCE:

1. MFN APPLICATION OF SAFEGUARD ACTIONS WOULD BE THE NORM. SUCH ACTIONS WOULD HAVE TO CONFORM TO THE CRITERIA  
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AND CONDITIONS OF THE AGREEMENT BUT THERE WOULD BE NO MULTILATERAL EXAMINATION OF A MEASURE BEFORE IT IS IMPLEMENTED UNLESS A SIGNATORY TO THE AGREEMENT REQUESTED SUCH AN EXAMINATION. THIS ACCORDS WITH PRESENT PRACTICE UNDER GATT ARTICLE XIX.

2. IN UNUSUAL AND EXCEPTIONAL CIRCUMSTANCES (UNSPECIFIED) HOWEVER, A PARTY TO THE AGREEMENT COULD, BY AGREEMENT WITH ANOTHER PARTY, RESTRICT IMPORTS OF A PRODUCT FROM THAT OTHER PARTY PROVIDED THE OBLIGATIONS AND PROCEDURES OF THE AGREEMENT WERE ADHERED TO. THE RESTRICTION COULD BE APPLIED EITHER BY THE EXPORTING OR THE IMPORTING COUNTRY.

AS IN THE FIRST CASE, THERE WOULD BE NO MULTILATERAL EXAMINATION OF A PROPOSED ACTION BEFORE IT IS IMPLEMENTED UNLESS A PARTY TO THE AGREEMENT REQUESTED SUCH AN EXAMINATION. IT SHOULD BE NOTED, HOWEVER, THAT THE PROCEDURES OF THE AGREEMENT WOULD REQUIRE PRIOR NOTIFICATION AND BILATERAL CONSULTATION (INCLUDING CONSULTATIONS AS REQUESTED BY THIRD COUNTRIES CONCERNED ABOUT TRADE DIVERSION). THE REQUIREMENT THAT AGREEMENT BE REACHED WITH THE EXPORTING COUNTRY WOULD PREVENT ABUSE OF THE RIGHT TO SELECTIVE ACTION.

IF BILATERAL AGREEMENT COULD NOT BE REACHED, THE COUNTRY PROPOSING SELECTIVE SAFEGUARD ACTION COULD REFER THE MATTER TO THE COMMITTEE OF SIGNATORIES. THE COMMITTEE WOULD ASSIST THE PARTIES IN FINDING A MUTUALLY SATISFACTORY SOLUTION.

3. IF NO AGREEMENT COULD BE REACHED WITHIN A SPECIFIED PERIOD OF TIME (EVEN WITH THE ASSISTANCE OF THE COMMITTEE) THE PARTY WISHING TO RESTRICT IMPORTS FROM A PARTICULAR EXPORTING COUNTRY COULD STILL TAKE THE ACTION PROVIDED:

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(A) SUCH ACTION HAD THE PRIOR APPROVAL OF THE COMMITTEE  
AND

(B) THE RESTRICTION WERE APPLIED ON A NON-DISCRIMINATORY  
BASIS AS BETWEEN COUNTRIES BEING RESTRICTED.

IF SUCH ACTION WERE TAKEN, THE EXPORTING COUNTRY WOULD  
BE FREE TO SUSPEND SUBSTANTIALLY EQUIVALENT BENEFITS TO  
THE TRADE OF THE RESTRICTING COUNTRY.

THE SYSTEM DESCRIBED ABOVE IS SET FORTH IN A NUMBER OF  
SPECIFIC POINTS IN ATTACHMENT 1. THE U.S. REPRESENTATIVE  
MAY DRAW ON THIS MATERIAL IN BILATERAL DISCUSSIONS BUT  
IT IS RECOMMENDED THAT THE WRITTEN TEXT NOT BE DISTRIBUTED

IN STEP 2 OF THE ABOVE SYSTEM (CONSENSUAL SELECTIVITY)  
WE WOULD LIKE TO AVOID ANY SPECIFIC REQUIREMENT THAT  
A COUNTRY TAKING ACTION MUST PROVE THAT IMPORTS FROM  
A PARTICULAR SOURCE ARE CAUSING THE INJURY. A REQUIRE-  
MENT OF THIS TYPE WOULD LIKELY LEAD TO EXTENSIVE MULTI-  
LATERAL EXAMINATION OF SOURCES OF INJURY TO DETERMINE  
WHETHER PROPOSED OMA'S ARE APPROPRIATE. SUCH A PROCEDURE  
WOULD PUT COUNTRIES IN A POSITION OF HAVING TO AGREE  
OPENLY THAT THEIR EXPORTS ARE CAUSING INJURY BEFORE  
AGREEING TO RESTRICTIONS. (A CONFESSION MANY COUNTRIES  
ARE NOW UNWILLING TO MAKE OPENLY ALTHOUGH THEY READILY  
AGREE TO RESTRICTIONS-OSTENSIBLY FOR OTHER PURPOSES).  
SUCH A SYSTEM MIGHT ALSO LEAD TO A CUMBERSOME AND UN-  
WORKABLE INTERNATIONAL REVIEW SYSTEM. THE ISSUE OF CAUSE  
OF INJURY WOULD LIKELY ARISE IN CASES OF DISAGREEMENT  
BROUGHT BEFORE THE INTERNATIONAL BODY IN THOSE CASES WHERE  
IT IS QUESTIONED ANYWAY, SO A REQUIREMENT FOR SUCH PROOF  
WOULD ONLY ADD UNNECESSARY RIGIDITY TO THE SYSTEM. WE  
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WOULD LIKE TO LIMIT THE EXPLICIT CONSTRAINTS ON THIS TYPE  
OF SAFEGUARD ACTION TO ADHERENCE TO THE CONDITIONS AND  
CRITERIA OF THE AGREEMENT, CONSENT BY THE AFFECTED PARTY,  
AND THE RIGHT OF APPEAL TO A MULTILATERAL BODY. IF A  
PARTICULAR CASE WERE APPEALED TO THE COMMITTEE OF  
SIGNATORIES, THEN, OF COURSE, THE COMMITTEE COULD EXAMINE  
THE RATIONALE FOR THE PROPOSED ACTION AND MIGHT, AMONG  
OTHER THINGS, WISH TO EXAMINE THE EFFECTS OF IMPORTS  
FROM PARTICULAR SOURCES.

WE BELIEVE THAT CONSENSUAL SELECTIVITY ALONG THE LINES  
INDICATED ABOVE WOULD PROVIDE SUFFICIENT FLEXIBILITY TO

HANDLE VIRTUALLY ALL THE CASES IN WHICH SELECTIVE ACTION WAS APPROPRIATE. THE EC AND THE NORDIC COUNTRIES WILL INSIST, HOWEVER, ON SOME SCOPE FOR UNILATERAL SELECTIVITY. WHILE WE ARE NOT WILLING TO GO THIS FAR, WE HAVE GIVEN THEM AS OPPORTUNITY TO ARGUE THEIR CASE UNDER STEP 3 ABOVE. STEP 3 PROVIDES A MEANS OF TAKING SELECTIVE ACTION WITHOUT THE AFFECTED PARTY'S CONSENT PROVIDED A MULTI-LATERAL BODY AGREES. THIS WOULD OFFER NO MORE THAN IS NOW AVAILABLE UNDER GATT ARTICLE XXV, EXCEPT THAT THE

COMMITTEE OF SIGNATORIES MIGHT NOT BE AS LARGE AS THE TOTAL GATT MEMBERSHIP. BUT IT WOULD INCLUDE ALL THE COUNTRIES THAT MIGHT BE AFFECTED BY ACTION OF THIS TYPE.

ATTACHMENT 1

- SELECTIVE APPLICATION OF SAFEGUARDS

1. IN GENERAL, SAFEGUARD MEASURES PURSUANT TO THIS AGREEMENT SHALL BE APPLIED ON A GLOBAL BASIS WITHOUT DISCRIMINATION AS BETWEEN SOURCES OF IMPORTS.
2. IN UNUSUAL AND EXCEPTIONAL CIRCUMSTANCES, HOWEVER, CONFIDENTIAL

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A PARTY TO THIS AGREEMENT MAY, BY AGREEMENT WITH ANOTHER PARTY, RESTRICT IMPORTS OF A PRODUCT FROM THAT OTHER PARTY PROVIDED THE OBLIGATIONS AND PROCEDURES OF THIS AGREEMENT ARE ADHERED TO. THE RESTRICTION MAY BE APPLIED EITHER BY THE EXPORTING OR THE IMPORTING COUNTRY.

3. THE COMMITTEE OF SIGNATORIES SHALL, AT THE REQUEST OF ANY MEMBER, EXAMINE ANY SAFEGUARD ACTION (INCLUDING ANY ACTION TAKEN PURSUANT TO POINT 2) TO DETERMINE WHETHER THE OBLIGATIONS AND PROCEDURES OF THIS AGREEMENT ARE BEING ADHERED TO.
4. IF, IN AN ACTION PURSUANT TO POINT 2, AN EXPORTING COUNTRY DOES NOT AGREE TO THE RESTRICTION OF ITS EXPORTS ON A NON-GLOBAL BASIS, THE MATTER MAY BE REFERRED TO THE COMMITTEE WHICH SHALL ASSIST THE PARTIES IN FINDING A MUTUALLY SATISFACTORY SOLUTION TO THE PROBLEM.
5. IF AGREEMENT IS NOT REACHED WITHIN DAYS, THE PARTY WISHING TO RESTRICT IMPORTS FROM A PARTICULAR EXPORTING COUNTRY MAY DO SO PROVIDED:
  - (A) SUCH ACTION HAS THE PRIOR APPROVAL OF THE COMMITTEE AND
  - (B) THE RESTRICTION IS APPLIED ON A NON-DISCRIMINATORY

BASIS AS BETWEEN COUNTRIES BEING RESTRICTED.

6. IF ACTION IS TAKEN PURSUANT TO POINT 5, THE EXPORTING COUNTRY SHALL BE FREE TO SUSPEND SUBSTANTIALLY EQUIVALENT BENEFITS TO THE TRADE OF THE RESTRICTING COUNTRY.

NOTE: TO PROVIDE FLEXIBILITY, THERE SHOULD BE A PROVISION  
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IN THE CODE PERMITTING THE COMMITTEE TO TEMPORARILY WAIVE INDIVIDUAL CODE OBLIGATIONS, IN PARTICULAR CASES, ATTACHING WHATEVER CONDITIONS SEEM APPROPRIATE. END QUOTE. END TEXT.

5. TWO FURTHER CONCERNS WERE VOICED IN THIS MORNING'S MEETING THAT WERE SHARED BY MOST OF THE PARTICIPANTS. (1) THE EC, NOT THE U.S., SHOULD BEAR THE ONUS FOR THIS DEPARTURE FROM THE MFN SYSTEM, AS THIS IS SOMETHING THEY NOT WE DESIRE. (2) YOU SHOULD THEREFORE CONSULT WITH THE JAPANESE FULLY SO THEY, AS WELL AS THE EC, DO NOT HEAR OF OUR POSITION SECOND-HAND ON AN ISSUE OF FUNDAMENTAL IMPORTANCE TO THEM. COOPER

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## Message Attributes

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**TAGS:** ETRD, MNUC, MTN  
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